

**FILED**

**JUN 18 2002**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DAMIEN A. NINO,

17 Defendant.

No. CR 02-0060 WHA

PLEA AGREEMENT

18  
19 I, Damien A. Nino, and the United States Attorney's Office for the Northern  
20 District of California (hereafter "the government") enter into this written plea agreement  
21 (the "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal  
22 Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the captioned information charging me with  
25 possessing child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). I agree that  
26 the elements of the offense and the maximum penalties are as follows:  
27  
28

PLEA AGREEMENT  
United States v. Damien Nino,  
No. CR 02-0060 WHA

- 1 Elements: 1. I knowingly possessed computer hard drives or disks;  
2 2. These computer hard drives or disks contained images of child  
3 pornography set forth in 18 U.S.C. § 2256(8)(A);  
4 3. The images of child pornography either (1) themselves traveled in  
5 interstate or foreign commerce by any means, including by computer,  
6 or (2) were produced (i.e., copied onto digital media) using materials  
7 that have traveled in interstate commerce; and  
8 4. I knew, on the date in question, that such images of child  
9 pornography were contained on the computer hard drives or disks at  
10 issue.

11 Maximum Penalties:

- 12 a. Maximum prison sentence 10 years  
13 b. Mandatory minimum prison sentence 2 years  
14 c. Maximum fine \$ 250,000  
15 c. Maximum supervised release term 3 years  
16 d. Mandatory special assessment \$ 100  
17 e. Registration as a sex offender under 18 U.S.C. § 4042(c).

18 I understand that, as a result of my prior conviction for annoying or molesting a  
19 child under 18, I am subject to a mandatory minimum prison sentence of 2 years. See 18  
20 U.S.C. § 2252A(b)(2).

21 2. I agree that I am guilty of the offense to which I will plead guilty, and I  
22 agree that the following facts are true:

23 a. In or about November of 1988, in Santa Cruz, California, I was convicted  
24 of one misdemeanor count of Annoying or Molesting a Child Under 18, in violation of  
25 California Penal Code Section 647.6.

26 b. On January 4, 2001, when I was stopped and subsequently arrested by  
27 officers from the San Francisco Police Department, I had in my possession a laptop  
28

1 computer containing numerous images of child pornography. I knew at the time of this  
2 arrest that the hard drive on this computer contained, among other things, dozens of  
3 photographs of prepubescent boys engaging in anal or oral copulation with adults or other  
4 children, and the lascivious exhibition of their genitals.

5 c. On January 4, 2001, when officers of the San Francisco Police Department  
6 searched my Larkin Street apartment, I had in my possession a desktop computer  
7 containing numerous images of child pornography. I knew at the time of this search that  
8 the hard drive on this computer contained, among other things, many photographs of  
9 prepubescent boys engaging in lascivious exhibition of their genitals, as well as anal or  
10 oral copulation with adults or other children.

11 d. On April 28, 2001, when I was arrested by the California Highway Patrol, I  
12 had in my possession a laptop computer containing numerous images of child  
13 pornography. I knew at the time of this arrest that the hard drive on this computer  
14 contained, among other things, dozens of photographs of prepubescent boys engaging in  
15 anal or oral copulation with adults or other children, and the lascivious exhibition of their  
16 genitals.

17 e. On September 19, 2001, when I was arrested by the San Francisco Police  
18 Department a second time, I had in my possession a desktop computer containing  
19 numerous images of child pornography. I knew at the time of this arrest that the hard  
20 drive on this computer contained, among other things, dozens of photographs of  
21 prepubescent boys engaging in anal or oral copulation with adults or other children, and  
22 the lascivious exhibition of their genitals.

23 f. I acknowledge that each of the computer hard drives referenced in  
24 paragraphs (b) through (e) above were manufactured outside of the United States, and  
25 therefore traveled in interstate and foreign commerce. I also acknowledge and agree that  
26 among the images of child pornography I possessed were numerous depictions of actual  
27 minor children engaging in sexual activities.

1           3.     I agree to give up all rights that I would have if I chose to proceed to trial,  
2 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
3 examine government witnesses; to remain silent or testify; to move to suppress evidence  
4 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the  
5 government, as may be limited by United States v. Ruiz, 241 F.3d 1157 (9<sup>th</sup> Cir. 2001);  
6 and to pursue any affirmative defenses and present evidence.

7           4.     I agree to give up my right to appeal my conviction, the judgment, and  
8 orders of the Court. I also agree to waive any right I may have to appeal my sentence,  
9 except that I reserve my right to appeal the sentence if the Court determines that my  
10 adjusted offense level under the Sentencing Guidelines is greater than 18.

11          5.     I agree not to file any collateral attack on my conviction or sentence,  
12 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced,  
13 except for a claim that my constitutional right to the effective assistance of counsel was  
14 violated.

15          6.     I agree not to ask the Court to withdraw my guilty plea at any time after it is  
16 entered.

17          7.     I agree that the Sentencing Guidelines should be calculated as follows, and  
18 that I will not ask for any other adjustments to, reductions of, or downward departures  
19 from the offense level:

20	a.	Base Offense Level, U.S.S.G. § 2G2.4(a):	15
21	b.	Specific offense characteristics (prepubescent minors; more than 10 items; 22 use of a computer):	6
23	c.	Acceptance of responsibility: (If I meet the requirements of 24 U.S.S.G. § 3E1.1)	<u>-3</u>
25	d.	Adjusted offense level	18

26 I agree that, regardless of any other provision in this agreement, the government may and  
27 will provide to the Court and the Probation Office all information relevant to the charged  
28

1 offenses or the sentencing decision. I also agree that the Court is not bound by the  
2 Sentencing Guidelines calculations above, the Court may conclude that a higher guideline  
3 range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my  
4 guilty plea.

5 8. I agree that I will make a good faith effort to pay any fine, forfeiture or  
6 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the  
7 Court, the government, or the U.S. Probation Office, provide accurate and complete  
8 financial information, submit sworn statements and give depositions under oath  
9 concerning my assets and my ability to pay, surrender assets I obtained as a result of my  
10 crimes, and release funds and property under my control in order to pay any fine,  
11 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

12 9. I agree not to commit or attempt to commit any crimes before sentence is  
13 imposed or before I surrender to serve my sentence. I also agree not to violate the terms  
14 of my pretrial release (if any); intentionally provide false information to the Court, the  
15 Probation Office, Pretrial Services, or the government; or fail to comply with any of the  
16 other promises I have made in this Agreement. I agree that, if I fail to comply with any  
17 promises I have made in this Agreement, then the government will be released from all of  
18 its promises below, but I will not be released from my guilty plea.

19 10. I agree to forfeit all of the computers and digital storage media that  
20 contained images of child pornography. I am aware that this forfeiture is authorized  
21 under 18 U.S.C. § 2253 and I agree not to contest this forfeiture in any way.

22 11. I agree that this Agreement contains all of the promises and agreements  
23 between the government and me, and I will not claim otherwise in the future.

24 12. I agree that this Agreement binds the U.S. Attorney's Office for the  
25 Northern District of California only, and does not bind any other federal, state, or local  
26 agency.

The Government's Promises

13. The government will move to dismiss the indictment pending against the defendant in this case at the time of sentencing.

14. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned information, specifically excluding any charges relating to crimes of violence or production of child pornography.

15. The government agrees to recommend the Guidelines calculations set out above.


The Defendant's Affirmations

16. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

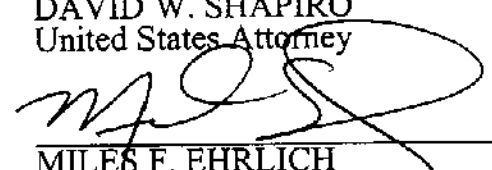
17. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

18. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: 6/18/02

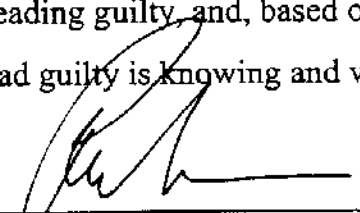
  
DAMIEN A. NINO  
Defendant

Dated: 6/17/02

DAVID W. SHAPIRO  
United States Attorney  
  
MILES F. EHRLICH  
Assistant United States Attorney

1 I have fully explained to my client all the rights that a criminal defendant has and  
2 all the terms of this Agreement. In my opinion, my client understands all the terms of this  
3 Agreement and all the rights he is giving up by pleading guilty, and, based on the  
4 information now known to me, his decision to plead guilty is knowing and voluntary.

5  
6 Dated: 6/18/02

  
\_\_\_\_\_  
ROBERT WAGGENER  
Attorney for Defendant